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10/077,346	02/14/2002	Raymond Zappe	0144	2491

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PHOENIX, AZ 85021

EXAMINER

GUTMAN, HILARY L

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/077,346

Applicant(s)

ZAPPE, RAYMOND

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because at [0053], line 7, "are disclosed" is inappropriate language for the abstract and should be modified.

Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 25-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 25, line 1, "relatively flexible" is recited which is vague and unclear in that the term "relatively" implies a comparison between two things and in this case the claim language does not complete the comparison but just states that the liner is "relatively flexible". There is

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no reference from which to determine the flexibility of the liner. Specifically, it is unclear what to what degree of flexibility the liner exhibits.

In claim 26, line 1, “relatively inflexible” is vague, indefinite, and unclear as to what features of the invention the applicant intends to recite. Specifically, the term “relatively” implies a comparison between two objects and in this case the claim language does not support another feature with which to compare or contrast the inflexibility of the liner. The degree of flexibility (or inflexibility) of the liner is not defined and is unclear.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 21-22 and 25-26, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kamiya et al.

Kamiya et al. disclose an article for a vehicle comprising in combination: a first base layer 5A; a patterned second layer 9 secured indirectly to the first base layer; and a clear third layer 10 secured to the patterned layer for permitting the patterned layer to be viewed.

The article exhibits excellent elasticity and can be flexed; therefore the article is relatively flexible. The article can be compared with other objects which are more flexible and thus in comparison be “relatively inflexible”.

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With regard to the “bedliner” recitation in the preamble of the claim, this language is not believed to limit the claim. Specifically, the claim preamble has the import that the claim as a whole suggests for it. In this case, the body of the claim makes no mention to any specific features that a bedliner would possess (such as a lip or wheel well cover) and the preamble merely states the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention’s limitations. Therefore, the preamble is not considered a limitation and is of no significance to claim construction. See *Kropa v. Robie*, 187 F.2d at 152, 88 USPQ2d at 480-81 and MPEP 2111.02).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamiya et al. as applied to claim 21 above and further in view of Okada et al.

Kamiya et al. do not disclose the patterned layer being monochromatic or polychromatic.

Okada et al. teach a screen printing method for carrying out not only a monochromatic printing but also a polychromatic or multi-color printing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have allowed the patterned layer of Kamiya et al. to be monochromatic or polychromatic as taught by Okada et al. in order to provide a variety of designs for the article.

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9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kamiya et al. as applied to claim 21 above and further in view of Sada et al.

Kamiya et al. lack a clear fourth layer on the clear third layer.

Sada et al. teach a coating structure for vehicles with a plurality of clear coating layers, numbered 22, 22', which may be placed one upon another to obtain further improved brilliancy of the structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied an additional clear layer as taught by Sada et al. upon the clear third layer of Kamiya et al. in order to improved the brilliancy of the article.

#### ***Response to Arguments***

10. Applicant's arguments filed 10/11/2003 have been fully considered but they are not persuasive.

The applicant states the abstract was rewritten in Amendment B to remove the offensive terms. The offensive "disclosed" was replaced by "shown". The examiner can find no such amendment and in the abstract appears to still contain the offensive term "disclosed" at [0053], line 7. This term should be modified.

With regard to the terms "relatively flexible" and "relatively inflexible" and the modification of the specification, this does not overcome the 112 second paragraph rejection. A modified rejection is set forth above more clearly pointing out that the term "relatively" implies a comparison between two features and that there is no reference with which to compare the liner in both claims 25 and 26.

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In response to applicant's argument that Kamiya et al. does not disclose a bedliner as recited in the preamble of the claim, the examiner would like to note that this language is not believed to limit the claim. Specifically, the claim preamble has the import that the claim as a whole suggests for it. In this case, the body of the claim makes no mention to any specific features that a bedliner would possess (such as a lip or wheel well cover) and the preamble merely states the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations. Therefore, the preamble is not considered a limitation and is of no significance to claim construction. See *Kropa v. Robie*, 187 F.2d at 152, 88 USPQ2d at 480-81 and MPEP 2111.02).

In response to the applicant's statement that the top and bottom layers are themselves multi-layered, the examiner would like to point out that other features can be read into the claim language since the claim is open-ended. The fact that the top and bottom layers are multi-layered is irrelevant. The claim language recited is found in the reference and if additional features are also found, so be it. The issue of the top and bottom layers being multi-layered will be considered if the applicant amends the claim such that the bedliner "consists" of only the recited features and nothing else.

With regard to the "foam layer", the offensive language that the "elastic resin sheet" of polyurethane resin may be considered a foam has been removed from the rejection. Also note, Kamiya et al. do in fact disclose a layer 5A to be foam.

With respect to the Okada et al. reference the applicant states that the reference shows a process of transfer printing. The examiner uses this reference to show that screen printing is old and well known in the prior art and can be performed for both monochromatic or polychromatic

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printing. Since the base reference to Kamiya discloses screen printing for producing the patterned layer 9, it is apparent that the patterned layer 9 can be either monochromatic or polychromatic since the prior art shows that the screen printing process is capable of this feat.

The applicant goes on to state that the Sada et al. reference concerns painting cars. The examiner uses this reference to teach the desirability of coating a structure with clear coating layers to improve the brilliancy of the structure.

### *Conclusion*

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496. The examiner can normally be reached on M-F 7:30am-4pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-3297 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

**13. Any response to this final action should be mailed to:**

Box AF

Assistant Commissioner for Patents

Washington, D.C. 20231


**or faxed to:**

(703) 872-9327, (for formal communications; please mark "EXPEDITED PROCEDURE")

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label "PROPOSED" or "DRAFT").

hlg  
October 30, 2003

  
DENNIS H. PEDDER  
PRIMARY EXAMINER  
AV 3612  
11/3/03